ALBERTA
ENVIRONMENTAL APPEALS BOARD

DECISION

Date of Decision – December 16, 2005

IN THE MATTER OF sections 91 and 96 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF appeals filed by the Mountain View Regional Water Services Commission, Gerald Oxtoby, City of Red Deer, Terry Little, Kelly Smith, Butte Action Committee, and Mike Gallie with respect to *Water Act* Preliminary Certificate No. 00198509-00-00 issued to Capstone Energy Ltd. by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: Costs Decision: *Mountain View Regional Water Services Commission et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Capstone*

Energy Ltd. (16 December 2005), Appeal Nos. 03-116 and 03-118-123-CD (A.E.A.B.).

BEFORE: Mr. Al Schulz, Board Member.

PARTIES:

Appellants:	Mountain View Regional Water Services Commission, represented by Mr. John Van Doesburg; Mr. Gerald Oxtoby, Mr. Terry Little and Mr. Kelly Smith, represented by Mr. Richard Secord, Ackroyd, Piasta, Roth & Day LLP; City of Red Deer, represented by Mr. Nick P. Riebeek, Chapman Riebeek; and Mr. Mike Gallie, represented by Mr. Don Bester.
Certificate Holder:	Capstone Energy Ltd., represented by Mr. Alan S. Hollingworth and Ms. Nadine Berge, Gowling Lafleur Henderson LLP.
Director:	Mr. David Helmer, Director, Central Region, Regional Services, Alberta Environment, represented by Mr. William McDonald and Ms. Charlene Graham, Alberta Justice.

EXECUTIVE SUMMARY

Alberta Environment issued a Preliminary Certificate and proposed licence to Capstone Energy Ltd. on July 23, 2003, for the diversion of water from the Red Deer River for industrial purposes (oilfield injection) near Red Deer, Alberta.

The Board received Notices of Appeal from the Mountain View Regional Water Services Commission, Mr. Gerald Oxtoby, the City of Red Deer, Mr. Terry Little, Mr. Kelly Smith, the Butte Action Committee, and Mr. Mike Gallie appealing the Preliminary Certificate and proposed licence.

The Board held a hearing in Red Deer, Alberta, at which 18 issues were addressed. The Board issued its Report and Recommendations to the Minister of Environment, and the Minister accepted the Board's recommendations.

The Board received applications for costs from the City of Red Deer and from Mr. Gerald Oxtoby, Mr. Terry Little, and Mr. Kelly Smith. After reviewing the applications and the submissions from the other parties, the Board awarded costs to the City of Red Deer ($129.00) and to Mr. Gerald Oxtoby, Mr. Terry Little, and Mr. Kelly Smith ($14,110.36, less the $5,850.00 they received as interim costs = $8,260.36). These costs are payable by Capstone Energy Ltd.

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I. BACKGROUND

[1] On July 23, 2003, the Director, Central Region, Regional Services, Alberta Environment (the "Director"), issued Preliminary Certificate No. 00198509-00-00 (the "Certificate") under the *Water Act*, R.S.A. 2000, c. W-3, to Capstone Energy Ltd. (the "Certificate Holder"). The Certificate included specific terms and conditions and the proposed licence (the "Licence"). The Certificate Holder is required to complete the terms and conditions of the Certificate before the actual licence is issued. The Licence allows for the diversion of water from the Red Deer River for industrial purposes (oilfield injection) at SW 4-36-1-W5M near Red Deer, Alberta.

[2] Between August 15 and September 8, 2003, the Environmental Appeals Board (the "Board") received Notices of Appeal from the Mountain View Regional Water Services Commission ("Regional Water Services") (Appeal No. 03-116), Mr. Gerald Oxtoby (Appeal No. 03-118), the City of Red Deer (Appeal No. 03-119), Mr. Terry Little (Appeal No. 03-120), Mr. Kelly Smith (Appeal No. 03-121), the Butte Action Committee (Appeal No. 03-122), and Mr. Mike Gallie (Appeal No. 03-123) (collectively the "Appellants"). On September 19, 2003, the Board received a Notice of Appeal from Ms. Dorene Rew.[1]

[3] The Board wrote to the Certificate Holder and the Director notifying them of the appeals and wrote to the Appellants acknowledging receipt of the Notices of Appeal. The Board requested the Director provide the Board with a copy of the records (the "Record") relating to these appeals. The Board received the Record on August 22, 2003, and additional documents were provided on September 2, 2003.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both boards responded in the negative.

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[1] The Board dismissed the appeal of Ms. Dorene Rew as her Notice of Appeal was filed late. See: *Rew* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Capstone Energy* (30 October 2003), Appeal No. 03-138-D (A.E.A.B.).

[5] Between August 26 and 29, 2003, the Board received Stay requests from the Appellants. On September 18, 2003, the Board notified the Parties that it would not grant a Stay as the requests were premature.

[6] On October 6, 2003, the Board received a request for interim costs on behalf of the Butte Action Committee, Mr. Gerald Oxtoby, Mr. Terry Little, and Mr. Kelly Smith.

[7] On October 21, 2003, the Board notified the Parties that it would hold a Preliminary Hearing to hear oral arguments on the four issues.[2]

[8] The Board provided a schedule to receive written arguments on the preliminary matters, and a Preliminary Hearing was held on November 14, 2003.

[9] On December 1, 2003, the Board notified the Parties that the Regional Water Services, the City of Red Deer, Mr. Gerald Oxtoby, Mr. Terry Little, and Mr. Kelly Smith were directly affected and their appeals would be heard. The Board dismissed the appeal of Mr. Mike Gallie, but the Board was of the view that Mr. Gallie had personal knowledge regarding the Red Deer River that may be of assistance to the Board, and therefore, he was granted full party status.

[10] In this same letter, the Board stated that it would not provide interim costs based on the information presented, but the Board may consider a more detailed application for interim costs. With respect to the appeal regarding the Director's decision to reject a Statement of Concern, as the appeal had been filed by the Butte Action Committee on behalf of Mr. Gallie, the Board did not have to consider the issue as his Notice of Appeal had been dismissed.

[11] On November 27, 2003, the Board received a letter from counsel for the City of Red Deer, expressing concern regarding the perception of bias that arose from the Preliminary

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[2] The issues heard at the Preliminary Meeting were:

"1. whether the Appellants (the Mountain View Regional Water Services Commission, the City of Red Deer, the Butte Action Committee, Mr. Gallie, Mr. Oxtoby, Mr. Little and Mr. Smith) are directly affected by Alberta Environment's decision to issue Preliminary Certificate No. 00198509-00-00 to Capstone Energy Ltd.;

2. what are the issues to be heard at a potential hearing;

3. Mr. Bester's request for interim costs; and

4. whether the Notice of Appeal filed by Mr. Bester in appeal No. EAB 03-122 is complete or properly before the Board because it appears to only appeal the Director's decision to reject Mr. Bester's Statement of Concern."

Hearing regarding a previous association with counsel for the Certificate Holder. He requested the Chair of the panel step aside.

[12] On November 28, 2003, the Board received a response from counsel for the Certificate Holder, in which he denied the allegations of the City of Red Deer's counsel and requested the Board dismiss the allegation of bias and the request to have the Chair step aside. On February 12, 2004, the Board notified the Parties that it denied the request to have the Chair step aside.

[13] On December 3, 2003, the Board received an interim costs application, totaling $8,854.00, on behalf of Mr. Terry Little, Mr. Gerald Oxtoby, Mr. Kelly Smith, and Mr. Mike Gallie. The Board received comments from the other Parties between December 5 and 8, 2003, regarding the interim costs application. The Board notified the Parties on December 18, 2003, that interim costs in the total amount of $5,979.00 would be awarded to Mr. Terry Little, Mr. Gerald Oxtoby, and Mr. Kelly Smith, payable by the Certificate Holder in two installments.[3]

[14] On January 7, 2004, the Board notified the Parties of the issues that would be heard at the Hearing.[4]

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[3] See: Interim Costs Decision: *Oxtoby et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Capstone Energy* (29 December 2004), Appeal Nos. 03-118, 120, 121 and 123-IC (A.E.A.B.).

[4] The issues identified were:

> "1. Purpose
>
> a. What role does purpose for which the water will be used have with respect to the allocation of water under the *Water Act*?
>
> b. Is the use of water for oilfield injection a valid reason to refuse to grant an allocation of water under the *Water Act*?
>
> c. Has the Director adequately balanced the economic benefits and environmental impacts of this project?
>
> d. Has the Director adequately considered alternatives to the use of water for this project, including the economics of those alternatives?
>
> e. Has the Director adequately considered the removal of the allocated water from the hydrological cycle?
>
> 2. Protection
>
> a. Does the Preliminary Certificate and Proposed Licence provide adequate protection for: (1) other water users, (2) recreational users, (3) fish and wildlife, and (4) the aquatic environment, including instream flow needs?
>
> b. Are the terms and conditions of the Preliminary Certificate and Proposed Licence adequate with respect to: (1) monitoring, (2) reporting, (3) minimum flow rates, and (4) maximum pump rates.

[15] On February 6, 2004, the Board received a letter from the Director expressing concern regarding the affidavits filed by Mr. Mike Gallie and a witness for the City of Red Deer, Dr. David Schindler. He also objected to the letter submitted by the City of Red Deer from the Chief Administrative Officer of the Town of Ponoka. In this same letter, the Director objected to the production of two witnesses requested by the Regional Water Services. On February 9, 2004, the Board received a letter from the Certificate Holder concurring with the Director's comments regarding the affidavits of Mr. Mike Gallie and Dr. David Schindler and the letter filed by the City of Red Deer. The City of Red Deer responded on February 10, 2004.

[16] On February 11, 2004, the Board provided the Parties with its decision in relation to the Preliminary Hearing.[5]

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c. Is the term of the Proposed Licence appropriate?

d. Are the renewal mechanisms relating to the Proposed Licence appropriate?

3. Volume

a. Is the volume of water allocated appropriate, including taking into account the proposed length of the project and the availability of water in the Red Deer River?

b. Has the Director adequately considered the impact of this allocation on future water users, including the future needs of municipalities?

c. Should the volumes of water be allocated in some staged manner?

4. Immediate Neighbours

a. Has the Director adequately considered the potential impacts of the project on the immediate neighbours to the project, being Mr. Oxtoby, Mr. Little, and Mr. Smith?

b. Was the testing undertaken sufficient and adequate to predict the long-term impacts of the project on the immediate neighbours?

c. Do the immediate neighbours to the project have adequate protection in the event that there is an impact on them?

5. Policy Considerations

a. Has the Director properly taken into account all the applicable policies of the Government of Alberta?

b. Do the Preliminary Certificate and Proposed Licence adequately allow for any changes regarding the policy directions on oilfield injection?

c. Has the Director adequately taken into account the sustainability of the Red Deer River Basin and the South Saskatchewan River Basin?"

[5] See: Preliminary Motions: *Mountain View Regional Water Services Commission et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Capstone Energy* (11 February 2004), Appeal Nos. 03-116 and 03-118-123-ID1 (A.E.A.B.).

[17] Between January 30 and February 2, 2004, the Board received intervenor requests from the Red Deer County Ratepayer Association (the "Ratepayer"), Ms. Dorene Rew, the Council of Canadians Red Deer Chapter, the Normandeau Cultural and Natural History Society, and Trout Unlimited (collectively, the "Intervenors"). The Board provided the Parties with an opportunity to respond to the intervenor requests.

[18] On February 9, 2004, the Board notified the Parties and the Intervenors that each of the Intervenors could participate by written submissions only. Some of the Intervenors advised the Board that the deadline for providing written submissions was unreasonable and requested further time to prepare their submissions. On February 12, 2004, the Board notified the Parties and the Intervenors that it would grant the Intervenors an extension to the filing deadline, and each Intervenor would be allotted ten minutes to speak at the Hearing.

[19] The Hearing was held on February 23 to 25, 2004, and written closing arguments were received between March 5 and 25, 2004, accepting the Board's recommendations.

[20] The Board provided its Report and Recommendations to the Minister on April 26, 2004, and the Minister released his decision on May 18, 2004.[6]

[21] On February 7, 2005, the Mountain View Regional Water Services Commission notified the Board that it was not applying for costs, as the appeal was part of its corporate responsibility.

[22] The Board received costs applications and submissions from the Parties between January 25 and February 14, 2005.[7]

II. SUBMISSIONS

A. Mr. Kelly Smith, Mr. Terry Little, and Mr. Gerald Oxtoby

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[6] See: *Mountain View Regional Water Services Commission et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Capstone Energy* (26 April 2004), Appeal Nos. 03-116 and 03-118-121-R (A.E.A.B.).

[7] The City of Red Deer provided its initial costs application on June 3, 2004. The application was reviewed along with the City of Red Deer's additional comments once the Board set the submission process.

[23] Mr. Kelly Smith, Mr. Terry Little, and Mr. Gerald Oxtoby (the "Landowners") requested costs be paid by the Certificate Holder. They requested costs for a total amount of $28,840.46, which included $24,347.50 for legal fees, $900.00 for travel time, $1,706.20 for disbursements, and $1,886.76 for GST. This claim was reduced by $900.00 for travel time plus $63.00 for GST. Therefore, the total costs claim was $27,887.46.

[24] The Landowners stated the costs claimed are directly related to the matters contained in their Notices of Appeal and the preparation and presentation of their submissions.

[25] The Landowners submitted the Board should exercise its discretion and award "…their costs in the full amount claimed (that is, on a solicitor-client basis, as modified … below)."[8] They stated an award of costs would be consistent with and would further the goals set out in section 2 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, ("EPEA") and the *Water Act*. They stated they made a substantial contribution to the appeals and had considerable success.

[26] The Landowners stated interim costs were awarded to them in this case. They explained the interim costs application was based on three hours of hearing preparation and 21 hours for acting counsel at a three day hearing. They stated the legal work turned out to be much more than merely acting as counsel at a three day hearing, as their counsel was required to conduct examination-in-chief, cross-examination, and prepare final arguments. The Landowners stated the Board directed the Certificate Holder to provide interim costs in the amount of $5,979.00, with the sum of $3,604.00 payable by February 2, 2004, and $2,375.00 to be paid 30 days after the close of the Hearing. The Landowners explained the second payment was reduced by $129.00 by the Board, and it was payable by April 26, 2004. The Landowners stated the first sum was paid on February 3, 2004, and the second payment was received June 23, 2004, almost two months late.

[27] The Landowners explained that, due to the volume of the material and the 18 specific issues that had to be addressed, their counsel required assistance from his associate.

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[8] Landowners' submission, dated January 30, 2005, at paragraph 10.

[28] The Landowners stated they required financial resources to make an adequate submission, and their full and effective participation through adequate funding was of the utmost importance. They stated they raise cattle on their lands adjacent to the proposed project, and due to the closure of the United States border to cattle exports, they are in dire financial circumstances and have been unable to access or use any other funding sources.

[29] The Landowners explained that, in their submission at the Hearing, they highlighted the importance of fresh water, and if the Certificate Holder injects it into the ground, the water will be gone forever. The Landowners stated they raised the issue of mitigating the environmental impacts, including looking for alternatives.

[30] The Landowners stated that given the complexity and difficulty of these appeals, meaningful participation "…required professional assistance which they should not be required to pay for themselves…."[9] They submitted their participation was important given what was at stake, and the Board, in its interim costs decision, stated it wanted the Landowner's participation.

[31] The Landowners submitted the Board, in its Report and Recommendations, indicated the Landowners had made a substantial contribution to the appeals.

[32] The Landowners stated they acted in good faith throughout the proceeding and had considerable success in their appeals, as the Certificate was varied and took into consideration their arguments.

[33] The Landowners submitted their involvement made a positive contribution to the goals of EPEA and the Water Act. They stated they made articulate presentations that advanced the public interest while remaining focused on the matters contained in their Notices of Appeal and the identified issues.

[34] The Landowners stated the "…costs requested are reasonable and reflect only the actual expenditures incurred in the preparation of their submissions…."[10] According to the Landowners, their counsel spent many additional hours preparing for the Hearing but did not record those hours in order to keep legal costs down.

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9 Landowner's submission, dated January 30, 2005, at paragraph 41.

10 Landowner's submission, dated January 30, 2005, at paragraph 55.

[35] The Landowners explained their counsel was called to the Alberta Bar in July 1980 and has practiced environmental law since the mid 1980s. They stated their counsel's hourly rate was $250.00 per hour, and a junior lawyer, whose hourly rate was $100.00 per hour, assisted in the initial stages to reduce legal costs.

[36] The Landowners stated that, after deducting the interim costs awarded, they are requesting final costs in the sum of $22,037.46 to be paid by the Certificate Holder. They submitted that the "…rationale for ordering costs to be paid by the body using the natural resources is particularly apt in this case, given that Capstone's proposed use of fresh water for oilfield injection does not return the fresh water to the river basin and results in the fresh water being lost from the hydrologic cycle for all practical purposes."[11]

[37] The Landowners provided a breakdown of their legal costs and expenses.

B. City of Red Deer

[38] The City of Red Deer stated it was concerned about the impact the Licence could have on water resources, and it expressed the concerns and objections in the context of the public interest. It submitted the arguments, research, and presentation substantially assisted the Board and expanded the Board's context of the potential consequences of the issuance of the Licence.

[39] The City of Red Deer stated it assisted the Board in understanding the present demands on the water resources in central Alberta by "…providing information on existing licenses for water consumption, statistics pertaining to how much water has already been allocated to oil field consumption and projections regarding future growth and consumption."[12]

[40] The City of Red Deer explained it provided studies demonstrating the strain on current water supplies, and the use of water used by the oil industry for oilfield injection is not returned to the hydrologic cycle.

[41] The City of Red Deer stated its expert witness, Dr. David Schindler, provided evidence regarding climological issues and to some extent the impact of the oil industry on the

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11 Landowner's submission, dated January 30, 2005, at paragraph 69.

12 City of Red Deer's submission, dated June 3, 2004, at page 2.

hydrologic cycle. It stated another witness, Mr. Bill Shaw, provided evidence concerning provincial issues revolving around water diversion and supply, and other representatives from central Alberta communities expressed their views.

[42] The City of Red Deer submitted it pointed out the Director failed to sufficiently investigate whether alternative methods of oil extraction would be viable, and it provided evidence at least one alternative was being utilized by other Alberta oil companies.

[43] The City stated it demonstrated how its long-term needs could be negatively impacted by the diversion of water from the Red Deer River. It stated its evidence addressed present and projected water demands and how its economic growth ambitions could be affected by the cumulative water loss.

[44] The City of Red Deer stated it clarified the need for a government policy that would place restrictions on these types of licences, including conditions pertaining to time and volume of water withdrawals.

[45] The City of Red Deer stated it "…assisted the Board by acting as a conduit for the opinions of the majority of the municipalities within Central Alberta and thereby its citizens."[13] It submitted this evidence provided insight into the needs and concerns of the great majority of its citizens regarding the water resources on central Alberta.

[46] The City of Red Deer stated it is funded by its taxpayers, and it "…has limited funds and must implement departmental budgets to ensure that taxpayer funds are available and properly allocated for the effective governance of the city as a whole."[14]

[47] The City of Red Deer stated the costs should be distributed between the Director and the Certificate Holder. According to the City, "…the Director did not sufficiently or appropriately interpret or understand his authority under the *Water Act*,"[15] and therefore, he did not sufficiently restrict the Licence. The City of Red Deer argued the Director adopted unsustainable views through his witnesses including: (1) the use of water by the Certificate

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13 City of Red Deer's submission, dated June 3, 2004, at page 3.

14 City of Red Deer's submission, dated June 3, 2004, at page 4.

15 City of Red Deer's submission, dated June 3, 2004, at page 4.

Holder would not act to remove water from the hydrological cycle, even though the City provided unequivocal evidence to refute this statement; (2) the Director was of the view the Licence would have no effect on the Red Deer River, and this was refuted by the evidence.

[48] According to the City of Red Deer, the Certificate Holder will accumulate significant economic benefits through the use of public water from the Red Deer River, and therefore, costs should be awarded against the Certificate Holder as it will directly benefit from the natural resource. The City argued the Certificate Holder's interests are self interests and are economically driven, whereas the City's interests are motivated by the public interest. The City of Red Deer stated that, since the Hearing, feedback from citizens, agencies, and organizations have emphasized the importance of the issues and the significance of its involvement in the process.[16] Therefore, according to the City of Red Deer, the Certificate Holder should bear the costs as opposed to the public at large.

[49] The City of Red Deer stated the "…process dictated by the Board was costly and time consuming. The requirements for communications between parties and the volume of submissions and responses required by the Board significantly exacerbated the costs of this action."[17]

[50] The City of Red Deer requested full costs, totaling $72,242.57.18 The City of Red Deer explained its solicitor has been at the bar for 33 years and charged the City $250.00 per hour.

[51] The costs claimed by the City of Red Deer were:

1.	Disbursements		$3.202.42
	- includes:	photocopies	$355.86
		faxes	$146.00
		long distance	$86.43
		postage	$222.22
		miscellaneous	$2,391.91[19]

[16] City of Red Deer's submission, dated January 25, 2005.

[17] City of Red Deer's submission, dated June 3, 2004, at page 5.

[18] In its submission, the City of Red Deer had a total of $64,339.00 for legal fees. However, there is a discrepancy of $25.00 that is not accounted for in January 2004, and this adjustment has been made to the totals, including the GST.

2.	Legal Fees (based on 223 hours at $250.00 per hour; 30.5 hours at $125.00 per hour; 44.2 hours at $100.00 per hour; and 5.1 hours at $65.00 per hour)	$64,314.00
3.	GST	$4,726.15
	TOTAL	$72,242.57

[52] The City of Red Deer provided a break down of the costs, but it did not provide receipts of any items.

C. Certificate Holder

[53] The Certificate Holder submitted "…each applicant for final costs must satisfy the Board that the circumstances warrant diverging from the basic principle that parties to the appeal should bear their own costs."[20] It argued no party should be compensated for participating in an appeal.

[54] The Certificate Holder stated it should not bear the sole responsibility for costs of a general policy investigation of water use in the oil and gas development in Alberta, and all of the Parties should bear costs of balancing the public interest between environmental protection and economic growth.

[55] The Certificate Holder opposed the City of Red Deer's costs application and submitted the City should not be awarded any costs.

[56] The Certificate Holder stated the City of Red Deer intervened due to its role as a municipal public utility of providing water to its residents and industrial users. The Certificate Holder argued the City was acting to protect its interests as a municipal public utility, and the City voluntarily became involved in the Hearing and should bear its own costs for doing so.

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[19] The miscellaneous costs included: books $24.99; meals $40.60; mileage $140.24; Quicklaw $2.33; and expert fees $2,183.75.

[20] Certificate Holder's submission, dated February 14, 2005, at paragraph 7.

[57] The Certificate Holder stated the City of Red Deer tried to "…convert the Hearing into a wide-ranging re-consideration of the policy of the Government of Alberta with respect to the use of water for oilfield injection. Witnesses produced by the City acknowledged that they were seeking a change in the legislation and/or policy in order to prevent the use of fresh water for oilfield injection, a remedy clearly not in the Board's jurisdiction or mandate."[21]

[58] The Certificate Holder argued the City of Red Deer did not act in good faith in all phases of the Hearing. The Certificate Holder stated the City of Red Deer refused to meet to try to resolve its concerns because it preferred to go to a hearing. The Certificate Holder stated the City may have been entitled to take an uncompromising position of opposition, but the Certificate Holder should not be required to fund the City's unwillingness to resolve issues in advance or through mediation, resulting in a more prolonged and costly hearing process.

[59] The Certificate Holder argued the witnesses for the City of Red Deer "…relied on generalized fears and perceptions. Not one witness put forward scientific or empirical evidence that the allocation of this water to Capstone would cause any real problems for the City."[22] The Certificate Holder submitted the City used the publicity of the Hearing to advance its policy position.

[60] The Certificate Holder stated the City of Red Deer failed to file affidavits detailing the evidence of one of its witnesses, Dr. David Schindler, even though the other Parties and the Board made several requests. The Certificate Holder stated this put the opposing Parties at a disadvantage, and it was required to largely guess at the details of Dr. Schindler's evidence. The Certificate Holder argued the behaviour of the City did not assist the Board or the other Parties in having the hearing proceed in an expeditious and fair way.

[61] The Certificate Holder argued the City of Red Deer's contribution was of limited value. It stated the City's witness, Dr. Schindler, did not provide any information that was specific to the Red Deer River basin or the activities proposed by the Certificate Holder. The Certificate Holder stated Dr. Schindler's evidence consisted of generalities about shrinking glaciers and reduced river flows in Alberta, and his testimony included anecdotal testimony

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21 Certificate Holder's submission, dated February 14, 2005, at paragraph 16.

22 Certificate Holder's submission, dated February 14, 2005, at paragraph 19.

about alternatives which he had no special training or expertise. The Certificate Holder stated the evidence was not provided in advance, and Dr. Schindler's evidence was not referenced by the Appellants in argument or by the Board in its Report and Recommendations.

[62] With respect to the other witnesses provided by the City of Red Deer, the Certificate Holder stated that, even though the local municipalities stated the water was needed for future growth, they admitted they had allocations and applications for allocations in advance of the Certificate Holder for the next 30 to 50 years.

[63] The Certificate Holder argued several steps by the City of Red Deer resulted in procedural objections and did not facilitate the Hearing process. The Certificate Holder referred to: (1) the "…unfounded allegation by the City's counsel of bias on the part of the Board Chairman…"[23] resulting in the other Parties need to respond; (2) the failure to provide Dr. Schindler's evidence in advance as directed; and (3) the attempt to introduce hearsay evidence regarding available alternatives.

[64] The Certificate Holder stated the City of Red Deer did not comply with the procedural requirements of the Board. It submitted the "…City's failure to file the evidence in a timely way led to delay in the Hearing, both with respect to the procedural motions at the commencement and in dealing with Dr. Schindler's evidence in chief."[24] According to the Certificate Holder, the City implied Dr. Schindler was a very busy man and he was too important to be bothered with the Board's procedure. The Certificate Holder stated this position was unfair to the other Parties that complied with the time restrictions and did not assist the Board in carrying out its duties in a fair and efficient way.

[65] The Certificate Holder submitted the costs claimed by the City of Red Deer were unreasonable and were several times the claim put forward by the Landowners who were the most potentially affected participants. The Certificate Holder explained the City of Red Deer claim exceeded the amount the Certificate Holder paid for its counsel for these appeals.

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[23] Certificate Holder's submission, dated February 14, 2005, at paragraph 25.

[24] Certificate Holder's submission, dated February 14, 2005, at paragraph 26.

[66] The Certificate Holder submitted counsel for the City of Red Deer did not have experience in environmental matters, which might explain the many hours he attributed to the Hearing.

[67] The Certificate Holder stated a number of items submitted by the City of Red Deer did not directly and primarily relate to the preparation and presentation of the submissions. The Certificate Holder referred to the City's charges on March 9, 2004, "…regarding submissions to Government water study and Committee studying the use of water…"[25] and the April 26, 2004 charge for contacting Dr. Schindler regarding a presentation to City Council. The Certificate Holder submitted there is no discretion to award costs for these amounts.[26] The Certificate Holder also questioned charges for Quicklaw and a book.[27]

[68] The Certificate Holder questioned the number of conferences with Mr. Don Bester of the Butte Action Committee and how those meetings assisted in the City making its submissions.

[69] The Certificate Holder objected to the costs claimed for Mr. Bill Shaw, as he was not qualified as an expert by the Board and "…his evidence was essentially restricted to anecdotal and factual matters."[28]

[70] The Certificate Holder stated Dr. Schindler had originally agreed to testify on an expenses only basis, and given the lack of value in his testimony, the Certificate Holder questioned why the Board should award a $1,000.00 attendance fee.

[71] The Certificate Holder acknowledged the Landowners were the Parties with the potential to be most directly affected by the granting of the Preliminary Certificate, and therefore, it limited to the question of the appropriate amount of costs in the circumstances.

[72] The Certificate Holder submitted that the difficulties faced by the cattle industry in Alberta are not the extraordinary circumstances that justify an award of solicitor-client costs.

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25 Certificate Holder's submission, dated February 14, 2005, at paragraph 30.

26 The costs referred to by the Certificate Holder were for the amount of $875.00 on March 9, 2004, and $100.00 on April 26, 2004.

27 The City of Red Deer charged $2.33 for Quicklaw and $24.99 for a book.

28 Certificate Holder's submission, dated February 14, 2005, at paragraph 32.

It submitted the Board should ensure that parties to an appeal share the burden of environmental protection, and there should be a reasonable sharing of the appeal costs, including by the Landowners.

[73] The Certificate Holder stated the actions of the City of Red Deer likely increased the costs to the Landowners, and therefore, it would be appropriate for the Landowners to seek payment for some portion of their charges from the City.

[74] The Certificate Holder noted that counsel for the Landowners stated he did not record all of the time he spent on the file, but he did not quantify how much he failed to charge. The Certificate Holder submitted it is the function of the Board to determine the appropriate level of costs and any deduction to that claim.

[75] The Certificate Holder submitted that, unless the Board grants the Landowners solicitor costs, the interim costs award of $5,850.00 should be subtracted from the actual amount of costs awarded as opposed to using the sum of $22,037.46 as a starting point for final costs.

[76] The Certificate Holder stated it is a small oil and gas producer and should not bear the sole responsibility for costs in these appeals. It submitted it should not have to fund the City of Red Deer's actions as a public utility and its desire to make broad public policy submissions, given the security of the City of Red Deer's water supply is not at risk. The Certificate Holder suggested the Landowners should share meaningfully in the costs of these appeals.

D. Director

[77] The Director submitted that Alberta Environment should not be responsible for paying the cost claims of the City of Red Deer or the Landowners.

[78] He explained that, under the *Water Act*, he is the statutory decision maker and it is his decision that was appealed. The Director stated that, given his statutory role, he is an automatic party to every appeal of his decisions. He submitted that the Board and the Courts have recognized this statutory role and considered it a vital factor in not ordering the Director pay costs, as long as he was acting in good faith.

[79] The Director stated the Minister upheld the Director's decision, and there was no finding by the Board that the Director acted in bad faith in his consideration of the Certificate Holder's application. He stated there were "…no special or exceptional circumstances demonstrated to warrant an order of costs against the Director."[29]

[80] The Director noted neither the City of Red Deer nor the Landowners made any cost claim against the Director.[30]

III. ANALYSIS AND DISCUSSION

A. Statutory Basis for Costs

[81] The legislative authority giving the Board jurisdiction to award costs is section 96 of EPEA which provides: "The Board may award costs of and incidental to any proceedings before it on a final or interim basis and may, in accordance with the regulations, direct by whom and to whom any costs are to be paid." This section gives the Board broad discretion in awarding costs. As stated by Mr. Justice Fraser of the Court of Queen's Bench in *Cabre*:

> "Under s. 88 [(now section 96)] of the Act, however, the Board has final jurisdiction to order costs 'of and incidental to any proceedings before it…'. The legislation gives the Board broad discretion in deciding whether and how to award costs."[31]

Further, Mr. Justice Fraser stated:

> "I note that the legislation does not limit the factors that may be considered by the Board in awarding costs. Section 88 [(now section 96)] of the Act states that the Board '*may* award costs … and *may*, in accordance with the regulations, direct by whom and to whom any costs are to be paid….'" (Emphasis in the original.)[32]

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29 Director's submission, dated February 14, 2005, at paragraph 36.

30 The Board notes the City of Red Deer submitted that "…costs of the Appeal should be distributed between both the Director and Capstone Energy Ltd." See: City of Red Deer's submission, received June 3, 2004.

31 *Cabre Exploration Ltd*. v. *Alberta (Environmental Appeal Board)* (2000), 33 Admin. L.R. (3d) 140 at paragraph 23 (Alta.Q.B.).

32 *Cabre Exploration Ltd*. v. *Alberta (Environmental Appeal Board)* (2000), 33 Admin. L.R. (3d) 140 at paragraphs 31 and 32 (Alta.Q.B.).

[82] The sections of the *Environmental Appeal Board Regulation*,[33] (the "Regulation") concerning final costs provide:

> "18(1) Any party to a proceeding before the Board may make an application to the Board for an award of costs on an interim or final basis.
>
> (2) A party may make an application for all costs that are reasonable and that are directly and primarily related to
>
> (a) the matters contained in the notice of appeal, and
> (b) the preparation and presentation of the party's submission.
>
> …
>
> 20(1) Where an application for an award of final costs is made by a party, it shall be made at the conclusion of the hearing of the appeal at a time determined by the Board.
>
> (2) In deciding whether to grant an application for an award of final costs in whole or in part, the Board may consider the following:
>
> (a) whether there was a meeting under section 11 or 13(a);
> (b) whether interim costs were awarded;
> (c) whether an oral hearing was held in the course of the appeal;
> (d) whether the application for costs was filed with the appropriate information;
> (e) whether the party applying for costs required financial resources to make an adequate submission;
> (f) whether the submission of the party made a substantial contribution to the appeal;
> (g) whether the costs were directly related to the matters contained in the notice of appeal and the preparation and presentation of the party's submission;
> (h) any further criteria the Board considers appropriate.
>
> (3) In an award of final costs the Board may order the costs to be paid in whole or in part by either or both of
>
> (a) any other party to the appeal that the Board may direct;
> (b) the Board.
>
> (4) The Board may make an award of final costs subject to any terms and conditions it considers appropriate."

[83] When applying these criteria to the specific facts of the appeal, the Board must remain cognizant of the purpose of the Act. The purpose of EPEA is found in section 2 which provides:

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[33] *Environmental Appeal Board Regulation*, A.R. 114/93.

"The purpose of the Act is to support and promote the protection, enhancement and wise use of the environment while recognizing the following:

> (a) the protection of the environment is essential to the integrity of ecosystems and human health and to the well-being of society;
> (b) the need for Alberta's economic growth and prosperity in an environmentally responsible manner and the need to integrate environmental protection and economic decisions in the earliest stages of planning;
> (c) the principle of sustainable development, which ensures that the use of resources and the environment today does not impair prospects for their use by future generations;
> (d) the importance of preventing and mitigating the environmental impact of development and of government policies, programs and decisions; …
> (f) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;
> (g) the opportunities made available through this Act for citizens to provide advice on decisions affecting the environment; …
> (i) the responsibility of polluters to pay for the costs of their actions;
> (j) the important role of comprehensive and responsive action in administering this Act."

[84] Similar provisions exist under section 2 of the *Water Act*:

"The purpose of this Act is to support and promote the conservation and management of water, including the wise allocation and use of water, while recognizing:

> (a) the need to manage and conserve water resources to sustain our environment and to ensure a healthy environment and high quality of life in the present and the future;
> (b) the need for Alberta's economic growth and prosperity;
> (c) the need for an integrated approach and comprehensive, flexible administration and management systems based on sound planning, regulatory actions and market forces;
> (d) the shared responsibility of all Alberta citizens for the conservation and wise use of water and their role in providing advice with respect to water management planning and decision-making;
> (e) the importance of working co-operatively with the governments of other jurisdictions with respect to transboundary water management;

> (f) the important role of comprehensive and responsive action in administering this Act."

[85] While all of these purposes are important, the Board believes the shared responsibility that section 2(f) of EPEA and 2(d) of the *Water Act* places on all Albertans "…for ensuring the protection, enhancement and wise use of the environment through individual action…" is particularly instructive in making its costs decision.

[86] However, the Board stated in other decisions that it has the discretion to decide which of the criteria listed in EPEA and the Regulation should apply in the particular claim for costs.[34] The Board also determines the relevant weight to be given to each criterion, depending on the specific circumstances of each appeal.[35] In *Cabre*, Mr. Justice Fraser noted that section "…20(2) of the Regulation sets out several factors that the Board 'may' consider in deciding whether to award costs…" and concluded "…that the Legislature has given the Board a wide discretion to set its own criteria for awarding costs for or against different parties to an appeal."[36]

[87] As stated in previous appeals, the Board evaluates each costs application against the criteria in EPEA and the Regulation and the following:

> "To arrive at a reasonable assessment of costs, the Board must first ask whether the Parties presented valuable evidence and contributory arguments, and presented suitable witnesses and skilled experts that:
>
> (a) substantially contributed to the hearing;
> (b) directly related to the matters contained in the Notice of Appeal; and
> (c) made a significant and noteworthy contribution to the goals of the Act.
>
> If a Party meets these criteria, the Board may award costs for reasonable and relevant expenses such as out-of-pocket expenses, expert reports and testimony or lost time from work. A costs award may also include amounts for retaining legal

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[34] *Zon* (1998), 26 C.E.L.R. (N.S.) 309 (Alta. Env. App. Bd.), (*sub nom. Costs Decision re: Zon et al.)* (22 December 1997), Appeal Nos. 97-005 to 97-015 (A.E.A.B.)).

[35] *Paron* (2002), 44 C.E.L.R. (N.S.) 133 (Alta. Env. App. Bd.), (*sub nom. Costs Decision: Paron et al.*) (8 February 2002), Appeal Nos. 01-002, 01-003 and 01-005-CD (A.E.A.B.) (*"Paron*").

[36] *Cabre Exploration Ltd*. v. *Alberta (Environmental Appeal Board)* (2000), 33 Admin. L.R. (3d) 140 at paragraphs 31 and 32 (Alta. Q.B.).

> counsel or other advisors to prepare for and make presentations at the Board's hearing."[37]

[88] Under section 18(2) of the Regulation, costs awarded by the Board must be "directly and primarily related to ... (a) the matters contained in the notice of appeal, and (b) the preparation and presentation of the party's submission." These elements are not discretionary.[38]

B. Courts vs. Administrative Tribunals

[89] In applying these costs provisions, it is important to remember there is a distinct difference between costs associated with civil litigation and costs awarded in quasi-judicial forums such as board hearings or proceedings. As the public interest is part of all hearings before the Board, it must take the public interest into consideration when making its final decision or recommendation. The outcome is not simply making a determination of a dispute between parties. Therefore, the Board is not bound by the "loser-pays" principle used in civil litigation. The Board will determine whether an award of costs is appropriate considering the public interest generally and the overall purpose as defined in section 2 of EPEA.

[90] The distinction between the costs awarded in judicial and quasi-judicial settings was stated in *Bell Canada* v. *C.R.T.C.*:

> "The principle issue in this appeal is whether the meaning to be ascribed to the word [costs] as it appears in the Act should be the meaning given it in ordinary judicial proceedings in which, in general terms, costs are awarded to indemnify or compensate a party for the actual expenses to which he has been put by the litigation in which he has been involved and in which he has been adjudged to have been a successful party. In my opinion, this is not the interpretation of the word which must necessarily be given in proceedings before regulatory tribunals."[39]

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[37] Costs Decision re: *Cabre Exploration Ltd.* (26 January 2000), Appeal No. 98-251-C at paragraph 9 (A.E.A.B.).

[38] *New Dale Hutterian Brethren* (2001), 36 C.E.L.R. (N.S.) 33 at paragraph 25 (Alta. Env. App. Bd.), (*sub nom. Cost Decision re: Monner*) (17 October 2000), Appeal No. 99-166-CD (A.E.A.B.).

[39] *Bell Canada* v. *C.R.T.C.*, [1984] 1 F.C. 79 (Fed. C.A.). See also: R.W. Macaulay, *Practice and Procedure Before Administrative Tribunals*, (Scarborough: Carswell, 2001) at page 8-1, where he attempts to

> "…express the fundamental differences between administrative agencies and courts. Nowhere, however, is the difference more fundamental than in relation to the public interest. To serve the public interest is the sole goal of nearly every agency in the country. The public interest, at best, is incidental in a court where a court finds for a winner and against a loser. In that sense, the court is

[91] The effect of this public interest requirement was also discussed by Mr. Justice Fraser in *Cabre*:

> "…administrative tribunals are clearly entitled to take a different approach from that of the courts in awarding costs. In *Re Green, supra* [*Re Green, Michaels & Associates Ltd. et al. and Public Utilities Board* (1979), 94 D.L.R. (3d) 641 (Alta. S.C.A.D.)], the Alberta Court of Appeal considered a costs decision of the Public Utilities Board. The P.U.B. was applying a statutory costs provision similar to section 88 [(now section 96)] of the Act in the present case. Clement J.A., for a unanimous Court, stated, at pp. 655-56:
>
> 'In the factum of the appellants a number of cases were noted dealing with the discretion exercisable by Courts in the matter of costs of litigation, as well as statements propounded in texts on the subject. I do not find them sufficiently appropriate to warrant discussion. Such costs are influenced by Rules of Court, which in some cases provide block tarrifs [*sic*], and in any event are directed to *lis inter partes*. We are here concerned with the costs of public hearings on a matter of public interest. There is no underlying similarity between the two procedures, or their purposes, to enable the principles underlying costs in litigation between parties to be necessarily applied to public hearings on public concerns. In the latter case the whole of the circumstances are to be taken into account, not merely the position of the litigant who has incurred expense in the vindication of a right.'"[40]

[92] EPEA and the Regulation give the Board authority to award costs if it determines the situation warrants it, and the Board is not bound by the loser-pays principle. As stated in *Mizera*:

> "Section 88 [now section 96] of the Act and section 20 of the Regulation give the Board the ability to award costs in a variety of situations that may exceed the common law restrictions imposed by the courts. Since hearings before the Board do not produce judicial winners and losers, the Board is not bound by the general principle that the loser pays, as outlined in *Reese*. [*Reese* v. *Alberta (Ministry of Forestry, Lands and Wildlife)* (1992) Alta. L.R. (3d) 40, [1993] W.W.R. 450 (Alta.Q.B.).] The Board stresses that deciding who won is far less important than assessing and balancing the contributions of the Parties so the evidence and arguments presented to the Board are not skewed and are as complete as possible. The Board prefers articulate, succinct presentations from expert and lay

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> an arbitrator, an adjudicator. Administrative agencies for the most part do not find winners or losers. Agencies, in finding what best serves the public interest, may rule against every party representing before it."

[40] *Cabre Exploration Ltd*. v. *Alberta (Environmental Appeal Board)* (2000), 33 Admin. L.R. (3d) 140 at paragraph 32 (Alta. Q.B.).

> spokespersons to advance the public interest for both environmental protection and economic growth in reference to the decision appealed."[41]

[93] The Board has generally accepted the starting point that costs incurred in an appeal are the responsibility of the individual parties.[42] There is an obligation for each member of the public to accept some responsibility of bringing environmental issues to the forefront.[43]

C. Consideration and Application of Criteria

1. City of Red Deer

[94] The City of Red Deer claimed costs of $72,242.57, the majority of which covered legal fees ($64,314.00 plus GST). This claim is based on 223 hours at $250.00 per hour, 30.5 hours at $125.00 per hour, 44.2 hours at $100.00 per hour, and 5.1 hours at $65.00 per hour. In addition, the claim is also for $3,202.42 in disbursements, which includes $2,183.75 for expert fees.

[95] The Board appreciated the participation of the City of Red Deer, and the evidence was important to the Board. These appeals had a significant public interest element, and part of the public interest element is how municipalities will be affected by the Director's decision. The use of potable groundwater for deep well injection is of interest to all Albertans, and as the City of Red Deer is the largest municipality in the vicinity of the proposed withdrawal, it was appropriate that it appeared before the Board to represent the interests of its citizens on this issue.

[96] As the City of Red Deer has a mandate to represent its constituents, the Board believes it is in a similar position as the Director regarding costs. If the Director is acting in good faith in furtherance of his statutory duties, costs will generally not be assessed against him.

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41 *Mizera* (2000), 32 C.E.L.R. (N.S.) 33 at paragraph 9 (Alta. Env. App. Bd.), (*sub nom. Cost Decision re: Mizeras, Glombick, Fenske, et al.*) (29 November 1999), Appeal Nos. 98-231, 232 and 233-C (A.E.A.B.) ("*Mizera*"). See: Costs Decision re: *Cabre Exploration Ltd.* (26 January 2000), Appeal No. 98-251-C at paragraph 9 (A.E.A.B.).

42 *Paron* (2002), 44 C.E.L.R. (N.S.) 133 (Alta. Env. App. Bd.), (*sub nom. Costs Decision: Paron et al.*) (8 February 2002), Appeal Nos. 01-002, 01-003 and 01-005-CD (A.E.A.B.).

43 Section 2 of EPEA states:

> "(2) The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing the following: … (f) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through

The Board believes the same principles should be applied to the City of Red Deer where it is carrying out its statutory duties. It should be free to participate in an appeal without concerns of costs being awarded against it as long as its participation is carried out in good faith and in furtherance of its statutory duties. The corollary of this is the City of Red Deer is not entitled to costs where it is participating in an appeal in furtherance of its statutory duties. This position supports the purposes of EPEA and in particular, section 2(a), which recognizes the interrelationship between the well-being of society and the protection of the environment.[44]

[97] Therefore, as the Board finds that the City of Red Deer was carrying out its statutory duties in these appeals, and that its participation in these appeals was in good faith, the Board will not award legal or disbursement costs to the City of Red Deer, except for $129.00, as discussed below for Dr. Schindler's appearance. The Board recognizes the City of Red Deer, as a publicly funded organization, has limited resources that, in most circumstances, are designated for specific areas and issues under its mandate. However, the Board is not willing to award additional costs in these appeals.

[98] In the interim costs award, the Board allowed $129.00 for the Landowners to retain the services of Dr. Schindler as an expert witness. At the Hearing, the Landowners returned these funds to the Certificate Holder, as Dr. Schindler was appearing on behalf of the City of Red Deer instead of the Landowners. The $129.00 claimed was to cover Dr. Schindler's travel costs ($114.00 for mileage) and meals ($15.00), and although the Board generally does not award costs for these items, it determined it was appropriate in this case. Dr. Schindler had agreed to volunteer his time at the Hearing, and as stated in the interim costs decision, the Board considered his participation at the Hearing would be valuable.[45] Therefore, the Board will allow these expenditures in these particular circumstances, and the Board will order costs of $129.00 be paid to the City of Red Deer. As for the other costs claimed in relation to Dr. Schindler's

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individual actions…."

[44] Section 2(a) of the Act provides:

"The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing … (a) the protection of the environment is essential to the integrity of ecosystems and human health and to the well-being of society."

[45] See: See: Interim Costs Decision: *Oxtoby et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Capstone Energy* (29 December 2004), Appeal Nos. 03-118, 120, 121 and 123-IC (A.E.A.B.) at

appearance at the Hearing, amounting to $1,231.88,[46] the Board is not willing to award these costs. No explanation was provided as to why Dr. Schindler charged $1,000.00 to appear at the Hearing when he had originally agreed to volunteer his time. In determining whether or not to award costs, the Board assesses the assistance the witness provided to the Board at the Hearing. In this case, Dr. Schindler's evidence was very broad and had little specific relevance to the issues heard regarding the Certificate. As his evidence did not provide any significant contribution to the Board's decision, the Board limits the costs award to $129.00.

[99] The City of Red Deer expressed concern regarding the volume of submissions and responses required by the Board. When the Board sets its process for a hearing or preliminary meeting, whether it be orally or by written submissions, it has to ensure the principles of natural justice and administrative law are adhered to. Of prime concern to the Board is that the process is fair to all parties. Although it tries to expedite the process as much as possible, the more preliminary matters that are presented, the more submissions and responses that will be required. The City of Red Deer itself raised preliminary motions that had to be dealt with, as was its right to raise the matters, but it must also have realized the principles of natural justice would require submissions and responses from all of the Parties, increasing the volume of submissions and responses.

[100] The Certificate Holder argued the City of Red Deer did not act in good faith throughout the process and specified the efforts made to mediate prior to the Hearing. The Board does not award costs against nor deny costs to a party as a penalty. The Board considers the awarding of costs in recognition of a party's assistance and substantial contribution to the appeal and for furthering the purposes of the acts, not as a means of punishing a party.

[101] Although the Board is not willing to grant costs to the City of Red Deer, except for some of the costs associated with the appearance of its witness Dr. Schindler, the Board has reviewed the costs submission of the City of Red Deer and notes the following. The City of Red Deer claimed 302.8 hours for preparation for and attending at the Hearing, including work

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paragraph 39.

[46] The costs for Dr. Schindler included $121.47 for mileage, $110.41 for hotel expenses, and $1,000.00 for expert fees.

completed by junior counsel and research assistants. The Board, if it does award legal costs, will base the award on a reasonable allowance for hearing and preparation time. With respect, the Board does not believe almost 303 hours to be a reasonable amount of time for these particular appeals. The Board has generally accepted preparation time to usually be approximately three to six hours for every one hour in the hearing.[47] According to counsel for the City of Red Deer's statement, the Preliminary Hearing lasted five hours and the Hearing lasted a total of 18 hours. Based on 23 hours of hearing time, it would seem reasonable to have 92 to 161 hours total preparation and hearing time. Even if the Board used Mr. Secord's 25 hours for the Hearing, plus the five hours for the Preliminary Hearing, the Board would anticipate a maximum of 210 hours for preparation and hearing time, considerably less than the 303 hours claimed by the City of Red Deer.

[102] In addition, there were claims for time that did not appear to relate to the preparation and presentation at the Hearing. For example, there was time claimed for contacting Dr. Schindler regarding a presentation to City Council and time spent drafting submissions to a government committee studying the use of water for oil field injection. These costs do not appear to be related to the preparation and presentation of submissions for the Hearing.

[103] The City of Red Deer also claimed costs for a book ($24.99) and Quicklaw access ($2.33). The purchasing of books does not directly relate to the preparation and presentation of the issues at the Hearing and is not an appropriate expenditure to be considered for costs. In previous decisions, the Board has stated that a charge for a Quicklaw search is "…no different than attempting to charge a client for the use of the firm's library,"[48] and, therefore, is not a proper disbursement.

[104] As the City of Red Deer was participated in the appeals as part of its mandate to represent the interests of its constituents, the Board does not believe an award of costs to the City of Red Deer is appropriate, with the exception of $129.00 for having Dr. Schindler attend the Hearing under the circumstances outlined in paragraph 98.

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[47] Costs Decision: *Imperial Oil and Devon Estates* (8 September 2003), Appeal No. 01-062-CD (A.E.A.B.) at paragraphs 116 to 117.

[48] Costs Decision: *Imperial Oil and Devon Estates* (8 September 2003), Appeal No. 01-062-CD (A.E.A.B.) at paragraph 95.

2. Landowners

[105] The Board appreciates the reasonable approach taken by the Landowners and the Certificate Holder in respect to the application for costs. Both of these Parties recognized the importance of sharing in the costs of the appeal process as required under section 2 of EPEA and the *Water Act*.

[106] The Board notes most of the costs requested by the Landowners are for legal fees, and they requested the fees be paid on a solicitor-client basis. The Board has set out its approach to costs in regard to solicitor fees in recent decisions and this approach is appropriate in this case as well.[49]

[107] In *Mizera*, the Board stated:

> "In court proceedings, it is only in exceptional circumstances that the courts award costs on a solicitor and client basis. Rather, the norm is for the courts to base costs, in so far as they relate to the costs of advocacy, upon a scale related to the size and nature of the dispute and the amount of trial and preparatory time customarily involved in matters of that type. In Alberta, this approach is embodied in the Schedule to the Rules of Court. Such amounts are, at all times, subject to the overriding discretion of the court. They are not intended to compensate for the full costs of advocacy, even in the court system where a 'loser pays' approach is the norm.
>
> In exercising its costs jurisdiction, this Board believes it is not appropriate (except perhaps in exceptional cases) to base its awards on a solicitor and client costs approach. It is up to each party to decide for themselves the level and the nature of representation they wish to engage. Similarly, it is up to each party to decide to what extent they wish their advocates to be involved in their pre-hearing preparation. The Board does not intend, through the exercise of its costs jurisdiction, to become involved in such decisions, yet this would be inevitable if, in deciding costs, the starting point was the actual account charged by the lawyer or advisor in question. Rather, the Board intends to follow the court's approach of basing any costs awards on a reasonable allowance for hearing and preparation time, suitably modified to reflect the administrative and regulatory environment and the other criteria that apply before the Board."[50]

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[49] See: Costs Decision: *Imperial Oil and Devon Estates* (8 September 2003) Appeal No. 01-062-CD (A.E.A.B.); *Mizera* (2000), 32 C.E.L.R. (N.S.) 33 (Alta. Env. App. Bd.), (*sub nom. Cost Decision re: Mizeras, Glombick, Fenske, et al.*) (29 November 1999), Appeal Nos. 98-231, 232 and 233-C (A.E.A.B.); and *Paron* (2002), 44 C.E.L.R. (N.S.) 133 (Alta. Env. App. Bd.), (*sub nom. Costs Decision: Paron et al.*) (8 February 2002), Appeal Nos. 01-002, 01-003 and 01-005-CD (A.E.A.B.).

[50] *Mizera* (2000), 32 C.E.L.R. (N.S.) 33 at paragraphs 17 to 18 (Alta. Env. App. Bd.), (*sub nom. Cost*

[108] Having regard to all of the arguments advanced by the Parties, the Board does not believe that the special circumstances contemplated in *Mizera*[51] exist in this case to warrant granting solicitor-client costs.

[109] The Board, if it does award legal costs, will generally base the award on a reasonable allowance for hearing and preparation time and will adjust this amount to reflect the other criteria the Board determines to be relevant in the specific case. As stated in *Paron*:

> "In the case before the Board, virtually all of the costs are legal fees. For this category of expense, except in exceptional cases, the Board has not previously assessed costs awards on a full solicitor and client basis. (Costs Decision re: *Cabre Exploration Ltd*., E.A.B. Appeal No. 98-251-C). Where the Board awards legal costs, the Board will generally base the costs awards on a reasonable allowance for hearing and preparation time and will adjust this amount to reflect the other criteria the Board applies under the Act and the Regulation for that case."[52]

[110] The Board believes the approach discussed in *Paron* is the appropriate approach in this case.

[111] As the Board has stated in previous decisions, the starting point of any costs decision is that the Parties are responsible for the costs they incurred. Section 2 of the *Water Act* and EPEA state citizens of Alberta have a responsibility in protecting the environment, and participating in the approval and appeal processes is one way of fulfilling their obligations.

[112] The Landowners participated effectively in the Hearing process, and as they live adjacent to the withdrawal site, if any person would be adversely affected by the project, it would be the Landowners. Mr. Secord, a lawyer who has been at the Alberta bar for over 20 years and has represented numerous clients in the environmental field, represented the Landowners.

[113] The Landowners were awarded interim costs in the amount of $5,979.00, of which $129.00 was returned to the Certificate Holder, as they did not call Dr. Schindler as an

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Decision re: Mizeras, Glombick, Fenske, et al.) (29 November 1999), Appeal Nos. 98-231, 232 and 233-C (A.E.A.B.). See: Costs Decision re: *Cabre Exploration Ltd.* (26 January 2000), Appeal No. 98-251-C at paragraphs 10 and 11 (A.E.A.B.).

51 *Mizera* (2000), 32 C.E.L.R. (N.S.) 33 (Alta. Env. App. Bd.), (*sub nom. Cost Decision re: Mizeras, Glombick, Fenske, et al.*) (29 November 1999), Appeal Nos. 98-231, 232 and 233-C (A.E.A.B.).

52 *Paron* (2002), 44 C.E.L.R. (N.S.) 133 (Alta. Env. App. Bd.), (*sub nom. Costs Decision: Paron et al.*) (8 February 2002), Appeal Nos. 01-002, 01-003 and 01-005-CD (A.E.A.B.).

expert witness at the Hearing. Being awarded interim costs does not automatically follow that final costs will also be awarded. Final costs are based on, among other things, the value of the evidence presented at the Hearing. If the evidence was of little or no value, it is conceivable that any costs awarded in the interim could be reimbursed to the payee. That is, however, not the case in these appeals.

[114] The Landowners provided valuable evidence, and the involvement of their lawyer assisted in ensuring the hearing process progressed effectively and efficiently. Mr. Secord raised significant issues and focused the presentations to the identified issues. The Board notes the Certificate Holder conceded some form of costs would be appropriate with respect to the Landowners.

[115] The principal reason for awarding costs in this case is the significant assistance that Mr. Secord, on behalf of the Landowners, gave the Board with respect to the 18 issues identified by the Board. The Board has awarded costs in previous decisions where it has found that a party made a substantial contribution to the hearing.[53] Mr. Secord effectively cross-examined the witnesses of the Certificate Holder and the Director. He raised significant issues, including the effect of losing water from the hydrological cycle, the need to consider alternatives to potable water, monitoring and reporting requirements in the Certificate and Licence, the term of the Licence, the volume of water allocated, other applicable policies, and the sustainability of the Red Deer River and South Saskatchewan River basins. The arguments raised regarding these issues resulted in a number of amendments to the Certificate and Licence that were accepted by the Minister.[54] For example, the term of the Licence was varied to allow the Director to consider additional policies that are being developed. Also, the amount of water allocated to the

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[53] See: Costs Decision: Costs Decision: *Imperial Oil and Devon Estates* (8 September 2003), Appeal No. 01-062-CD (A.E.A.B.); *Maga et al.* (27 June 2003), Appeal Nos. 02-023, 024, 026, 029, 037, 047, and 074-CD (A.E.A.B.); Costs Decision re: *Kievit et al.* (12 November 2002), Appeal Nos. 01-097, 098 and 101-CD (A.E.A.B.); Costs Decision re: *Kozdrowski* (7 July 1997), Appeal No. 96-059 (A.E.A.B.); and Costs Decision re: *Paron et al.* (8 February 2002) Appeal Nos. 01-002, 01-003 and 01-005-CD (A.E.A.B.). See also: Costs Decision re: *Mizeras, Glombick, Fenske, et al*. (29 November 1999), Appeal Nos. 98-231, 232 and 233-C (A.E.A.B.).

[54] See: *Mountain View Regional Water Services Commission et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Capstone Energy* (26 April 2004), Appeal Nos. 03-116 and 03-118-121-R (A.E.A.B.).

Certificate Holder was reduced to encourage the Certificate Holder to seek other sources of water for deep well injection.

[116] With regard to costs associated with legal counsel, the Board stated in *Mizera*:

> "In assessing costs for legal counsel and expert witnesses, the Board reiterates the importance of current specific data/information in their hearings, concise and organized cases and for Parties to have access to informed, experienced assistance in preparing their cases…. In this appeal … many aspects of the presentations by Parties claiming costs added value to the Board's overall process. The Board's costs awards are based on this added value." [55]

[117] The Board found Mr. Secord to be very helpful, and the Board is quite sure that without his assistance, the processing of the appeals would have been longer and more costly for all Parties. Mr. Secord focused the evidence of the Landowners to the identified issues and conducted a focused and efficient cross-examination.

[118] Given the nature and number of issues under appeal, the number of Appellants represented by Mr. Secord, and the fact that a three-day Hearing was held, the Board finds the legal costs claimed by the Landowners to be reasonable.

[119] Through Mr. Secord, the Landowners were able to further the public interest and the goals of the *Water Act* and EPEA on an issue that is very important to all Albertans. As the Board stated in *Paron*:

> "In any decision on costs, the purpose of the Act must be considered. The purposes of the Act are found in section 2 …. While all of these purposes are important, the Board is of the view that the shared responsibility that section 2(f) of the Act places on all Albertans '…for ensuring the protection, enhancement and wise use of the environment through individual action…' is particularly instructive in making its costs decision."[56]

[120] The Landowners made a positive contribution to the Hearing, and assisted the Board in varying the Approval to be consistent with sections 2(a), (b), (d), (f), and (g) of EPEA and sections 2(a), (b), (c), (d), and (f) of the *Water Act*.[57] The filing of the Appellants' appeals

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55 Re: *Mizera* (2000), 32 C.E.L.R. (N.S.) 33 (Alta. Env. App. Bd.), (*sub nom.* Cost Decision re: *Mizeras, Glombick, Fenske, et al.)* (29 November 1999), Appeal Nos. 98-231, 232 and 233-C (A.E.A.B.) at paragraph 26.

56 Costs Decision re: *Paron et al*. (8 February 2002) Appeal Nos. 01-002, 003 and 005-CD (A.E.A.B.) at paragraph 30.

57 Section 2 of EPEA provides, in part:

and their pursuance of the issues before this Board has, in result, positively affected the original Certificate and Licence in favour of the protection of potable water sources in the province.

[121] While the Board reiterates its starting point that each party to an appeal should bear its own costs, the Board is also aware that "…environmental hearings challenging a highly technical and scientific approval may require a balancing of resources to 'level the playing field' between citizen appellants … and corporations…."[58]

[122] In the Board's view, financial assistance to enable the retention of experienced legal counsel may help to address the imbalance of resources in these circumstances and contribute to the efficient functioning of the appeal process set out under EPEA - all of which ultimately assists appellants, the Board, the public, and the approval or licence holders whose approvals or licences are under appeal.

"The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing the following:

(a) the protection of the environment is essential to the integrity of ecosystems and human health and to the well-being of society;

(b) the need for Alberta's economic growth and prosperity in an environmentally responsible manner and the need to integrate environmental protection and economic decisions in the earliest stages of planning;…

(d) the importance of preventing and mitigating the environmental impact of development and of government policies, programs and decisions;…

(f) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;

(g) the opportunities made available through this Act for citizens to provide advice on decisions affecting the environment;…."

Section 2 of the *Water Act* states, in part:

"The purpose of this Act is to support and promote the conservation and management of water, including the wise allocation and use of water, while recognizing:

(a) the need to manage and conserve water resources to sustain our environment and to ensure a healthy environment and high quality of life in the present and the future;

(b) the need for Alberta's economic growth and prosperity;

(c) the need for an integrated approach and comprehensive, flexible administration and management systems based on sound planning, regulatory actions and market forces;

(d) the shared responsibility of all Alberta citizens for the conservation and wise use of water and their role in providing advice with respect to water management planning and decision-making;…

(f) the important role of comprehensive and responsive action in administering this Act."

[58] Costs Decision re: *Kozdrowski* (7 July 1997), Appeal No. 96-059 (A.E.A.B.) at paragraph 30.

[123] In the interim costs decision, the Board took judicial notice of the difficult times ranchers and farmers are presently faced with, including drought conditions and the effects of export bans on beef as a result of having bovine spongiform encephalopathy found in the province. These issues continue to be factors in creating financial uncertainties in the agricultural community. The Board wanted participation of the Landowners at the Hearing, and with the assistance of their legal counsel, they provided strong arguments that resulted in the Board recommending changes to the Certificate and Licence.

[124] The costs claimed on behalf of Mr. Secord are reasonable and his contribution on behalf of the Landowners was substantial, as required by sections 18(2) and 20(2)(f) of the Regulation. However, the Board is unwilling to award costs on a solicitor-client basis. Pursuant to section 2(f) of EPEA and 2(d) of the *Water Act*, the Landowners must accept the responsibility of bearing some of the costs related to the appeals.

[125] Although the Board realizes it was beneficial, at least from a costs perspective, to have junior counsel do some of the preparatory work, it was Mr. Secord's assistance at the Hearing that convinces the Board that costs should be awarded. The Board will therefore only consider the costs claimed for Mr. Secord and the related disbursements. Mr. Secord did not claim for time associated with travel, as the Board has determined in previous decisions that it would not award costs for travel time in most cases.[59] Generally, the Board also will not award costs for travel expenses, such as meals, lodging, and mileage. Therefore, the Board will not consider these costs included in the disbursements listed by Mr. Secord.

[126] Based on this, the starting point for the costs award is $20,175.00 for legal fees, $1,187.25 for disbursements, plus $1,495.36 for GST, for a total of $22,857.61. In this case, the Board is willing to accept, as a starting point, 50 percent of the legal costs claimed by Mr. Secord ($10,087.50), plus disbursements ($1,187.25) and GST ($789.23), for a total of $12,063.98. The Board has adjusted this amount in previous decisions depending on the level of contribution the party made to the hearing.

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[59] See: Interim Costs Decision: *Oxtoby et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Capstone Energy* (29 December 2004), Appeal Nos. 03-118, 120, 121 and 123-IC (A.E.A.B.); and Costs Decision: *Maga et al.* (27 June 2003), Appeal Nos. 02-023, 024, 026, 029, 037, 047, and 074-CD (A.E.A.B.).

[127] In this case, the Board considers it appropriate to raise the amount above the 50 percent. The Board finds Mr. Secord's fees very reasonable considering his experience and expertise. Mr. Secord has over 25 years experience and has appeared before this Board, and other tribunals, on previous occasions.[60] He stated he did not claim all of the hours he spent on the file in order to reduce the costs to the Landowners. Although he did not provide any indication of the amount of time he did not claim, the Board believes he did reduce the time claimed. As stated previously, the Board considers it appropriate to have three to six hours preparation time for each hour spent in the Hearing. Mr. Secord claimed a total of 24 hours for the Hearing days. Although some of this might have been preparation time, it does provide the Board with a guide as to the number of hours that would be reasonable for preparation time. Based on three to six hours for each hour at the Hearing, the Board would expect a claim of between 96 and 168 hours for preparation and appearing at the Hearing. Mr. Secord claimed 80.7 hours at a rate of $250.00 per hour. Although he had a junior lawyer assisting with some of the preparation of the submissions, the total hours claimed was still less than anticipated. The rate of $250.00 is the current maximum hourly rate the Government of Alberta would likely pay for outside counsel based on its tariff of fees.[61] Therefore, as Mr. Secord's claim is extremely reasonable, and noting the Landowners are ranchers and farmers faced with economic obstacles, the Board is willing to increase the costs award for legal fees to $12,000.00. This, added to the disbursements allowed and the applicable GST, amounts to a final costs award of $14,110.36.

[128] Pursuant to section 2(b) of the Regulation, the Board will also consider any interim costs awarded. In this case, the Landowners were awarded $5,979.00, less the $129.00 previously discussed. As the Board is unwilling to award solicitor-client costs in this case, the interim costs will be deducted from the final awards costs. As the interim costs were to be used

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[60] According to the Alberta Legal Telephone Directory 2004-2005, Mr. Secord was admitted to the Law Society of Alberta in 1980 and as a result, has 25 years of legal experience in Alberta. Based on the tariff of fees used by the Government of Alberta for outside counsel with his level of experience, the rate would be $250.00/hour. The Board considers the Government of Alberta rate is an appropriate tariff against which to judge the appropriateness of legal fees, but notes that there are circumstances in which it may not be appropriate.

[61] In the Interim Costs decision, the Board calculated Mr. Secord's fee at a rate of $190.00 per hour. Since the Board made its decision on interim costs, the Board has become aware of the increase in the schedule of rates for outside counsel. Therefore, the purposes of determining final costs, the Board will use the current tariff of $250.00 per hour for counsel with more than 15 years of at the bar. See: Interim Costs Decision: *Oxtoby et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Capstone Energy* (29 December 2004), Appeal Nos.

for the preparation for the Hearing, it would essentially be double billing for the same work if interim and final costs were awarded for the preparing for the same Hearing.

[129] As the Landowners have received $5,850.00 for interim costs, this amount will be deducted from the final costs award. The final costs to be paid to the Landowners will be $8,260.36.

3. Who Should Bear the Costs?

[130] Although the legislation does not prevent the Board from awarding costs against the Director, the Board has stated in previous cases, and the courts have concurred,[62] that costs should not be awarded against the Director providing his actions, while carrying out his statutory duties, were done in good faith.

[131] The Director in this case was fulfilling his statutory obligations, and the Certificate and proposed licence were issued in accordance with the legislation. The Board finds no special circumstances or misconduct of the Director and, therefore, does not view this as an appropriate case in which to order costs against the Director.

[132] In previous costs decisions against a project's proponent, the Board has described the role of project proponents as being "…responsible for incorporating the principles of environmental protection set out in the Act into its project. This includes accommodating, in a reasonable way, the types of interests advanced by the parties…."[63] As the Board has stated before, "…these costs are more properly fixed upon the body proposing the project, filing the application, using the natural resources and responsible for the projects financing, than upon the public at large as would be the case if they were to be assessed against the Department."[64]

03-118, 120, 121 and 123-IC (A.E.A.B.).

62 See: *Cabre Exploration Ltd.* v. *Alberta (Environmental Appeal Board)* (2001), 33 Admin. L.R. (3d) 140 (Alta. Q.B.).

63 See: Costs Decision re: *Cabre Exploration Ltd.* (26 January 2000), Appeal No. 98-251-C (A.E.A.B). In *Cabre*, the Board stated that where the Department has carried out its mandate and has been found, on appeal, to be in error, then in the absence of *special circumstances*, it should not attract an award of costs. The Court of Queen's Bench upheld the Board's decision: *Cabre Exploration Ltd.* v. *Alberta (Environmental Appeal Board)* (2001), 33 Admin. L.R. (3d) 140 (Alta. Q.B.)

64 Re: *Mizera* (2000), 32 C.E.L.R. (N.S.) 33 (Alta. Env. App. Bd.), (*sub nom.* Cost Decision re: *Mizeras, Glombick, Fenske, et al*.) (29 November 1999), Appeal Nos. 98-231, 232 and 233-C (A.E.A.B.) at paragraph 33.

[133] In this case, the Director's decision was not overturned by the Board but was varied. Even if the decision had been reversed, special circumstances may be required for costs to be awarded against the Director. The courts, in the decision of *Cabre*, considered the issue of the Board not awarding costs against the Director. In his reasons, Justice Fraser stated:

> "I find that it is not patently unreasonable for the Board to place the Department in a special category; the Department's officials are the original statutory decision-makers whose decisions are being appealed to the Board. As the Board notes, the Act protects Department officials from claims for damages for all acts done in good faith in carrying out their statutory duties. The Board is entitled to conclude, based on this statutory immunity and based on the other factors mentioned in the Board's decision, that the Department should be treated differently from other parties to an appeal.
>
> The Board states in its written submission for this application:
>
> 'There is a clear rationale for treating the [Department official] whose decision is under appeal on a somewhat different footing *vis a vis* liability for costs than the other parties to an appeal before the Board. To hold a statutory decision maker liable for costs on an appeal for a reversible but non-egregious error would run the risk of distorting the decision-maker's judgment away from his or her statutory duty, making the potential for liability for costs (and its impact on departmental budgets) an operative but often inappropriate factor in deciding the substance of the matter for decision.'In conclusion, the Board may legitimately require special circumstances before imposing costs on the Department. Further, the Board has not fettered its discretion. The Board's decision leaves open the possibility that costs might be ordered against the Department. The Board is not required to itemize special circumstances that would give rise to such an order before those circumstances arise."[65]

[134] In this case, the Director exercised his judgment in performing his statutory duties, and his actions could not be considered as inappropriate as defined by the legislative authority, and it certainly was not an exercise of bad faith. Although the Board would have preferred that the Director had taken additional steps to protect potable water, the Board does not find that this constitutes the "special circumstances" contemplated by the court, or this Board, to award costs against the Director.

[135] The Board finds no special circumstances or misconduct of the Director and, therefore, does not view this as an appropriate case in which to order costs against the Director.

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[65] *Cabre Exploration Ltd.* v. *Alberta (Environmental Appeal Board*) (9 April 2001) Action No. 0001-11527 (Alta. Q.B.) at paragraphs 33 to 35.

[136] As stated previously, the Board does not consider it appropriate in these appeals to have the City of Red Deer responsible for any of the costs of the other Parties. The City of Red Deer was acting in good faith and adequately represented its constituents.

[137] In previous costs decisions against a project's proponent, the Board has described the role of project proponents as being "…responsible for incorporating the principles of environmental protection set out in the Act into its project. This includes accommodating, in a reasonable way, the types of interests advanced by the parties…."[66] As the Board has stated before, "…these costs are more properly fixed upon the body proposing the project, filing the application, using the natural resources and responsible for the projects financing, than upon the public at large as would be the case if they were to be assessed against the Department."[67]

[138] Therefore, the Board concludes that no such special circumstances exist to warrant costs being awarded against either the Director or the City of Red Deer. The Certificate Holder did not argue that it should not be responsible for any costs awarded to the Landowners. In the circumstances of these appeals, costs will be ordered against the Certificate Holder.

IV. CONCLUSION

[139] For the forgoing reasons and pursuant to section 96 of the *Environmental Protection and Enhancement Act*, the Board awards costs, to be payable by Capstone Energy Ltd., as follows:

1.	City of Red Deer	$129.00
2.	Mr. Gerald Oxtoby, Mr. Terry Little, and Mr. Kelly Smith	$8,260.36
	Total:	$8,389.36

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[66] See: Costs Decision re: *Cabre Exploration Ltd.* (26 January 2000), Appeal No. 98-251-C (A.E.A.B). In *Cabre*, the Board stated that where the Department has carried out its mandate and has been found, on appeal, to be in error, then in the absence of *special circumstances*, it should not attract an award of costs. The Court of Queen's Bench upheld the Board's decision: *Cabre Exploration Ltd.* v. *Alberta* (*Environmental Appeal Board*) (2001), 33 Admin. L.R. (3d) 140 (Alta. Q.B.)

[67] Re: *Mizera* (2000), 32 C.E.L.R. (N.S.) 33 (Alta. Env. App. Bd.), (*sub nom.* Cost Decision re: *Mizeras, Glombick, Fenske, et al.* (29 November 1999), Appeal Nos. 98-231, 232 and 233-C (A.E.A.B.)) at paragraph 33.

[140] The Certificate Holder shall pay this award of costs to the City of Red Deer and the Landowners within 60 days of issuance of this decision, and payment shall be made on trust to the Appellants' counsels, Mr. Nick P. Riebeek and Mr. Richard Secord, respectively. The Certificate Holder is requested to provide confirmation to the Board that the payment has been made.

Dated on December 16, 2005, at Edmonton, Alberta.

"*original signed by*"

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Al Schulz
Board Member